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SUBJECT: SECURITY COUNCIL DEBATES INTERNATIONAL LAW

REF: 06 STATE 103574

11. BEGIN SUMMARY: Security Council members joined by 16 other representatives of UN Missions debated the topic of the Security Council and international law on June 22, 2006. Nicolas Michel, Under-Secretary-General for Legal Affairs, and President of the International Court of Justice (ICJ), Rosalyn Higgins, also spoke at the meeting, which Danish Foreign Minister Per Stig Moller chaired. Delegations addressed three themes set out in a discussion paper the Danish Presidency circulated beforehand: (1) promoting the rule of law in conflict and post-conflict situations; (2) ending impunity for international crimes; and (3) enhancing the efficiency and credibility of UN sanctions regimes. Ambassador Bolton delivered the U.S. statement, and Danish Foreign Minister Moller read a Statement on behalf of the Council on international law after the debate (reftel). Statements, as available, have been sent electronically to IO/UNP and L/UNA. END SUMMARY.

12. Danish Foreign Minister Moller opened the Security Council's debate on international law June 22 by saying discussion should aim to provide a forum to consider how the Council could further contribute to, strengthen, and develop an international order based on the rule of law. In her presentation, ICJ President Higgins argued that early recourse to third party settlement, including through the ICJ, could resolve at least some of the problems the Danes had identified in framing the debate. To mobilize the ICJ's potential, she suggested the Council consider whether to develop a policy under which, in all political disputes that threaten peace and where assertions of legal entitlement are made, the Council would indicate strongly to the parties that they are expected to have recourse to the ICJ. She also urged the Council to use Article 36(3) of the Charter as a central policy tool. Article 36(3) provides that in making recommendations for the settlement of disputes the Council "should also take into consideration that legal disputes as a general rule should be referred by the parties to the International Court of Justice."

13. In his remarks, Legal Counsel Michel summarized the Secretary-General's recent letter to the Security Council

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providing views on the appropriate minimum standards for the Council's sanctions committees to follow in listing and de-listing individuals and entities. Michael set out four minimum elements for ensuring that the sanctions committees' procedures are equitable and transparent, arguing that the designated person/entity should have the right to review by an "effective" review mechanism. (Comment: USUN has stressed to Michel and his staff that Council members -- not the Secretary-General -- should determine procedures for the

UN sanctions committees and that the Secretary-General should provide views only if the Security Council requested them.  
End comment.)

#### The Role of the Security Council in International Law

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¶4. Several Security Council delegations cited the Council's central role in forming and applying the rules of international law, consistent with its mandate under the UN Charter to secure international peace and security, while several non-Council members asserted the General Assembly's primacy. For example, Liechtenstein, Mexico, Egypt, and Venezuela cautioned the Council against encroaching on the authority of the General Assembly. Liechtenstein and Mexico also highlighted their initiative to include an item on "the rule of law at the national and international levels" on the agenda of the 61st General Assembly. (Comment: Mexican Deputy PermRep Gomez Robledo will chair the Sixth Committee in the 61st General Assembly. End comment.) If the Council is to realize its full potential to strengthen international law and to help instill the rule of law, South Africa said comprehensive reform is necessary to address the Council's composition and working methods.

#### The Rule of Law in Conflict/Post-Conflict Situations

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¶5. Most delegations stressed the importance of re-establishing the rule of law in post-conflict states, and some proposed ways the UN could enhance its efforts to do so. Denmark said the Council promotes the rule of law in post-conflict national societies to ensure the stability and legitimacy of those societies. The UK, Argentina, Tanzania, and Austria (speaking on behalf of the EU) advocated the establishment of a rule of law assistance unit in the Secretariat. Japan said the UN should compile a collection

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of best practices relating to establishing the rule of law, and Switzerland recommended that the Council adopt a body of practices concerning the authorization of the use of force. Slovakia and Greece called on the Security Council to mandate peacekeeping and peacebuilding operations to address transitional justice and rule of law activities. Similarly, Tanzania said the Council must strengthen mechanisms to protect civilians in armed conflicts and post-conflict situations.

¶6. Most delegations also emphasized the role of the Security Council in preventing conflict and promoting the peaceful settlement of disputes. In this regard, the UK, Greece, and Peru urged states that have not done so to accept the compulsory jurisdiction of the ICJ and resort to the ICJ more frequently.

#### Ending Impunity

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¶7. Delegations emphasized the need for the Security Council to end impunity, and many called for leadership to ensure that efforts to secure peace and justice do not become mutually exclusive. Argentina, France, Greece, Tanzania, the UK, and Canada (speaking also on behalf of Australia and New Zealand) cited the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, or the Special Court for Sierra Leone as mechanisms the Council uses to fight impunity. France also said it looked forward to the conclusion of an agreement between the UN and the Lebanese government to establish a tribunal of an international character to try those responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri. In contrast, Russia expressed discomfort at the Council's increasing resort to Chapter VII to promote the rule of law, saying the Council should act under Chapter VII only when there is a threat to international peace and security and it has exhausted all other measures. Various delegations also

called for the Security Council to continue to cooperate with and support the International Criminal Court and urged states that have not yet done so to become a party to the Rome Statute.

#### UN Sanctions

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¶18. Delegations stressed the need for fair and effective procedures in applying UN sanctions and expressed support for the 1267 Committee's efforts to revise its listing and de-listing guidelines. The UK, Austria, and Greece welcomed the Brown University Watson Institute's paper on strengthening targeted sanctions, which the governments of Sweden, Switzerland, and Germany commissioned. Greece also associated itself with the Secretary-General's proposals, while Qatar lamented that the sanctions committees' existing procedures do not ensure due process. Ghana supported the creation of an appeal or review mechanism and said it would "examine favorably" France's proposal to establish a focal point in the UN for transmitting listing and de-listing requests. In an indirect reference to the U.S. proposal for revising the 1267 Committee's listing and de-listing procedures, Slovakia said permitting individuals and entities to submit de-listing petitions to any member of the Security Council seems "reasonable." Slovakia then appeared to temper its support for the U.S. proposals, mentioning that an external process to review sanctions committees' decisions could be useful.

¶19. Delegations also commented generally on UN sanctions regimes. China and Nigeria both said strict standards and timelines must be set for sanctions to mitigate their negative humanitarian effects, and China reiterated its position that the Security Council must apply sanctions cautiously and avoid "double standards." Venezuela argued that the Council should employ sanctions only when diplomacy fails and said the Council's increasing resort to sanctions targeting individuals exceeds its authority under the UN Charter. Although many delegations emphasized the need to strengthen the efficacy of UN sanctions, Canada made the most forceful statement, advocating improving and strengthening experts' panels and other mechanisms to monitor sanctions implementation.

¶10. Comment: In a testament to the Danes' careful planning, the debate ran smoothly, with most delegations making measured statements. Despite Denmark's high-level representation, only eight other Council members' permanent representatives attended even part of the time. The remaining countries were represented by DPR's or below. End

comment.  
BOLTON